

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 1168 of 1994****For Approval and Signature:****HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**
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1 Whether Reporters of Local Papers may be
allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the
fair copy of the judgment ?

4 Whether this case involves a substantial
question of law as to the interpretation
of the constitution of India, 1950 or any
order made thereunder ?

5 Whether it is to be circulated to the
civil judge ?

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MANHARBHAI ISHWARBHAI PATEL AND OTHERS**Versus****STATE OF GUJARAT**
=====**Appearance :**

MR AD SHAH for the Appellants

MR AJ DESAI, ADDITIONAL PUBLIC PROSECUTOR for Opponent
No.1MR KR RAVAL for Original Complainant
=====**CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI****Date : 12/10/2006****ORAL JUDGMENT**

1. This appeal is directed against the judgment and
order dated 03.12.1994 passed by the learned Second Extra

Assistant Judge, Bharuch in Sessions Case No.80 of 1992.

2. The learned Judge was pleased to convict accused No.1 under Section 326 of the Indian Penal Code and sentence to suffer S.I. for 3 years, fine of Rs.500/- and in default, to suffer 3 months imprisonment. Accused Nos.2 and 3 were convicted for an offence under Sections 323 and 326 read with 114 of the Indian Penal Code and sentence to suffer S.I. for 1 year, fine of Rs.250/- and in default, to suffer 1 month's imprisonment.

3. Learned advocate for the appellants invited attention of this Court to the medical evidence in the form of deposition of Dr.Vilasbhai Fakirbhai Patel, Medical Officer at Ankleshwar. He is examined as PW4 at Exh.12. Mr.Shah also invited attention to Exh.13 – a certificate of injury given by PW4 (Dr.Vilasbhai Fakirbhai Patel).

The learned Advocate next invited attention of the Court to the deposition of Dr.Joseph Khristi, Medical Officer, Civil Hospital, Bharuch, who is examined as PW11 at Exh.26 and an Injury Certificate Exh.27 given by PW11.

The learned Advocate invited attention of the Court to the deposition of Dr.Jyotikumar Dayashankar Vyas, Medical Officer, S.S.G.Hospital, Baroda, who is examined

as PW12 at Exh.28 and Exh.29 – Injury Certificate issued by PW12 and also to the indoor case papers which are at Exh.30.

Last in the line of medical evidence, learned Advocate referred to the deposition of Dr.Jayshreeben Mehta, Medical Officer, S.S.G. Hospital, Baroda, who is examined as PW13 at Exh.39. He also referred to operation notes at Exhs.40 and 41 and case papers at Exh.42 pertaining to the operation.

4. Learned advocate Mr.Shah invited attention of the Court to the deposition of the injured complainant – Kanchanbhai Ishwarbhai Patel, who was present before the Court yesterday and while producing the compromise pursis, reiterated the factum of the matter being compromised between the parties.

Mr.K.R.Raval, who is representing the complainant identified the complainant and submitted that he is informed by the complainant – his client that the matter is compromised between the parties. The compromise is taken on record.

5. Mr.A.D.Shah, learned advocate for the appellants submitted that in view of the fact that the parties have compromised the matter and the fact that the Court has

granted leave to compound the offence, he does not challenge the conviction recorded by the learned Judge. He submitted that he is making his submissions only on the point of sentence imposed.

From the perusal of the medical evidence of PW4 and PW11, it is clear that the complainant – injured had in all 3 injuries. One in the abdomen and two on the back. So far as injury in the abdomen is concerned, the same is described as, 'verticle incised wound in the right abdomen about 3 cm from the naval.' It was measured to be 2 cm X 1/4 cm. PW4 has deposed that when the Dying Declaration was recorded, the patient was conscious and according to him, looking to the nature of the injury and the part in which the same was caused, he had advised to take the patient to Bharuch for further treatment. He has specifically admitted in the cross-examination that, he could not assess the depth of the injury and therefore, he was not able to to make the definite statement as to whether the abdomen wall was punctured or not. He has also admitted in the cross-examination that, until the depth of the injury is known, it is not possible for him to state as to whether the injury can be said to be 'serious'.

In the deposition of PW11, he has described the

injuries as under:

“ On medical examination, I found the following injuries on his body.

- 1) About 1.5 cm. X 1/2 c.m. Deep verticle incised wound over right hypochondrium.
- 2) About 3 cm. X 1/4 c.m. muscle deep incised wound over left flank about 3 cm. left to spine in the region of L2 L3.
- 3) About 4 cm. X 2 cm. bruise over Left scapular region.”

Like the first doctor, i.e. PW4, this doctor, i.e. PW11 has also stated that:

“I advised the patient to go to the S.S.G. Hospital Baroda and consequently referred him to the said hospital as I found injury No.1 as it was on the abdomen and was cavity and the same could develop into a seriousness.”

In the cross-examination, PW11 has admitted that:

“..... I agree with the suggestion that I cannot say with certainty as to the depthness/deepness of the Injury No.1. Consequently it would follow that I cannot say whether the said injuries had punctured the abdomen or not.....”

He has further stated in the cross-examination that:

“I cannot say about the internal injuries. It is true that I had not probed the injury No.1 about its depthness or the deepness, however, as it was found

on a vital organ limb i.e. on the abdomen of the patient, I term it as of the serious nature.....”

Later on, he explained about he describing the injury to be serious by following words:

“I have termed abdomen as a vital/sensitive organ limb of a human body because it contents the liver from the intestine/stomach, liver, kidneys etc. and any deep incised wound on this part of a human body could possibly cut and consequently damage the aforesaid internal parts of a human body and which could sometimes become fatal”

However, when this doctor is confronted with the medical jurisprudence, he has stated that:

“It is true that Mody's Medical jurisprudence has not termed abdomen as a vital part of a human body. I consider Mody's work as an authentic and elaborate discussion on the subject. I agree with the suggestion that because I believed and presumed that Injury No.1 on abdomen could have affected the internal organ and, therefore, that prompted me to term the said injury as of serious nature. It is true that if no internal injury is caused and only the outer injury is found to have been inflicted then it would be from my opinion of simple nature.”

6. Dr.Jyotikumar Dayashankar Vyas, PW12 – Exh.28, after describing two injuries by their measurements has stated that:

"During the course of hospitalisation as an indoor patient, on the same day "exploratory Lapotomy" was done 16.6.91 at 11.00 p.m. on operation the (during the course of the operation) following injury were noted :

1. Perforation in interior and postirior surface of stomach.
2. Tear in the body of pancrease.
3. Retroperitoneal heaematoma."

In cross-examination, this doctor has admitted that:

"It is true that the injuries under re. Cannot be fatal one and the patient who has sustained these type of injury would not succumbed to them, and they were also not likely to cause or sufficient cause death."

7. Last, PW13 – Dr.Jayshreeben P.Mehta at Exh.39 has deposed that:

"My investigation of the patient revealed to me that the patient was seriously wounded and therefore, emergency operation was carried out on the same day. I had found following injuries on the body.

- (1) Right hypocondrium – incised verticle would
- (2) Left peraspinal region.

Injury No.1 was on the vital part of the body.

On exploration of the abdomen there was a

perforation in the interior surface and posterior surface of the stomach and tear in the body of the pancreas and with retroperitoneal hemotoma. After suturing of the perforation drainage tube was kept and abdomen was sutured in layers."

8. This doctor has admitted in cross-examination by stating that:

"I agree with Dr.Modi's work – medical jurisprudence is a standard book for the medical students and is one of the prescribed syllabus. I agree with Dr.Modi's observation that stomach is not a vital part of a human body. Now I say that in my subjective opinion it is vital part however removal of the stomach will not jeopardize the functioning of the human body and also would not prove fatal and result into termination of the life."

9. From the aforesaid discussion, it is clear that doctors have clearly opined that the injury was not of the nature which would have caused death.

10. The learned Second Extra Assistant Judge in paragraph No.25 of the judgment and order, after appreciating the medical evidence and the totality of the case, has held that accused No.1 cannot be held guilty for an offence under Section 307 of the Indian Penal Code and has convicted him for an offence under Section 326 of the Indian Penal Code. So far as accused Nos.2 and 3 are concerned, they are convicted for an offence under

Section 323 of the Indian Penal Code for their individual act, but are then convicted under Section 326 read with Section 114 of the Indian Penal Code. After recording this conviction, sentence as aforesaid is imposed.

11. The learned advocate for the appellants relied upon a decision of the Hon'ble the Apex Court in the matter of **MAHESH CHAND AND ANOTHER VS. STATE OF RAJASTHAN**, reported in AIR 1988 Supreme Court 2111. He submitted that in the case before the Hon'ble the Apex Court, the trial Court had acquitted the accused, but they were convicted by the High Court for the offence under Section 307 of the Indian Penal Code. The Hon'ble the Apex Court noted that the offence under Section 307 is not compoundable under the law, but then, at the request of the parties, to treat it as a special case in view of the peculiar circumstances of the case, the Hon'ble the Apex Court, making reference to its earlier decision in the matter of Suresh Babu Vs. State of Andhra Pradesh, (1987) 2 JT 361, was pleased to grant the permission to compound the offence. The Hon'ble the Apex Court observed in paragraph Nos.3 and 4 as under:

“3. We gave our anxious consideration to the case and also the plea put forward for seeking permission to compound the offence. After examining the nature of the case and the circumstances, it may be proper

that the trial court shall permit them to compound the offence.

4. We therefore, direct the trial Judge to accord permission to compound the offence, after giving an opportunity to the parties and after being satisfied with the compromise agreed upon. The connected papers filed in this connection before this Court be transmitted to the trial court for the purpose. The parties, if they want may file additional documents."

12. Learned advocate submitted that in the present case also, the offence is under Section 326 and not compoundable under the law, but then, as the parties have compromised the matter, the complainant had remained present before the Court, duly identified by learned Advocate Mr.K.R.Raval and the parties are residing in the same 'faliya', incident had taken place in the year 1991, till date there is no other untoward incident between the parties, it can safely be said that the parties do not have any bitterness amongst them and therefore, it will be in the fitness of things if the case is compounded.

13. Learned advocate next relied upon a decision of the Hon'ble the Apex Court in the matter of RAM SHANKER AND OTHERS VS. STATE OF UTTAR PRADESH, reported in 1983 Supreme Court Cases (Cri) 60. The Hon'ble the Apex Court was pleased to observe that:

“After hearing counsel for the parties, we find that it was not a case under Section 307, IPC at all. We, therefore, convert the conviction of appellant Ram Shanker from one under Section 307, IPC to that under Sections 325/34, IPC. An application has been made by both the parties that the offence may be compounded. In the circumstances, therefore, so far as the offence under Sections 325/34, IPC is concerned, we sanction the compounding of the offence as the parties have settled their differences and acquit Ram Shanker of the charges framed against him. The offence under Section 323, IPC is compoundable without permission of the Court, and as Sheo Shanker and Nand Kumar have compounded the offence, they are acquitted of the charges framed against them.”

Mr.Shah submitted that in the present case, in view of the compromise, he does not press the conviction part and only requests that the sentence part may be modified and that the offence be compounded.

14. The learned advocate next relied upon a decision of the Hon'ble the Apex Court in the matter of **PAPPU AND OTHERS VS. STATE OF PUNJAB**, reported in AIR 2000 Supreme Court Cases 3633(2). He invited attention of the Court to the following observations of the Hon'ble the Apex Court:

“Some of the appellants in this appeal have been

convicted under S. 307, IPC and other under S. 307 read with S. 149, IPC. They have also been convicted under S. 323 and S. 323 read with S. 149, IPC. They have been sentenced to suffer rigorous imprisonment for three years for the offence punishable under S. 307, IPC. Only point now urged by the learned counsel for the appellants as that the appellants and P.Ws. 3, 4 and 5 who were injured in the incident, are close relatives, they have now settled their dispute, their relations have now become cordial and therefore their sentence may be reduced. Considering the near relationship of the parties and the fact that there is a genuine compromise between the parties, we reduce the sentence of the appellants to the period already undergone even though we maintain their conviction. The appeal is thus partly allowed”

Mr.Shah submitted that a similar order in the case on hand will serve the ends of justice.

15. He next relied upon a decision of the Hon'ble the Apex Court in the matter of **MALKIAT SINGH AND ANOTHER VS. STATE OF PUNJAB AND OTHERS**, reported in 1983 Supreme Court Cases (Cri) 52(II). The Hon'ble the Apex Court was pleased to observe as under:

“It appears that in this case the accused have entered into a compromise with the persons injured in the occurrence out of which this appeal arises. Taking note of this fact and following the decision of this Court in *Ram Pujan v. State of U.P.1*, the

High Court in effect reduced the sentence of imprisonment of the two of the appellants before it to the periods already undergone by them, but in the case of the other two who are appellants before us a different order was made. We think that the ends of justice would be met if the sentences of imprisonment passed on the appellants before us are also reduced to the periods undergone by them. We do not disturb the sentences of fine imposed on the appellants. The appeal is disposed of accordingly."

16. Learned advocate submitted that in the case of RAM PUJAN AND OTHERS VS. STATE OF UTTAR PRADESH, reported in AIR 1973 Supreme Court 2418, the Hon'ble the Apex Court was pleased to hold that, taking into consideration the fact of compromise, even if the offence for which accused were sentenced was not compoundable, the same can be so done. The Hon'ble the Apex Court was pleased to observe in paragraph No.7, relevant part of which reads as under:

"It would, in our opinion, meet the ends of justice if the sentence of imprisonment awarded to the appellants is reduced to the period already undergone provided each of the appellants pays a fine of Rs.1,500/- in addition to the period of imprisonment already undergone for the offence under S. 326 read with Section 34 Indian Penal Code. In default of payment of fine, each of the appellants shall undergo rigorous imprisonment for a total period of one year for the offence under Section 326 read with Section 34 Indian Penal Code. Out of the

fine, if realised, Rs.2,000/- should be paid to Ram Sewak and Rs.2,000 to Ram Samujh as compensation. We order accordingly.”

17. Learned advocate submitted that accused No.1 has undergone imprisonment for 7 days, whereas accused Nos.2 and 3 were released on bail.

18. Taking into consideration the fact that the accused and the complainant are residing in the same 'faliya' and after the incident, which took place in the year 1991, for long 15 years there is no other incident which would go to show that there is any bitterness in the relations of the accused and the complainant and in view of the fact that the complainant himself has stated before this Court that they have compromised the matter and this Court has already granted permission to compound, accused No.1, who is convicted for offence under Section 326 of the Indian Penal Code and has undergone imprisonment for 7 days, the sentence is reduced to the period undergone.

So far as accused Nos.2 and 3 are concerned, they are convicted for offence under Sections 323 and 326 read with 114 of the Indian Penal Code. Conviction under Section 326 read with Section 114 of the Indian Penal Code is not sustainable. Hence, the same is quashed. For offence under Section 323 of the Indian Penal Code,

they are acquitted.

Fine is already paid by the accused. That part of the sentence is not disturbed. The appeal is accordingly allowed.

(RAVI R.TRIPATHI, J.)

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